IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

Execution Application No.197 of 2004

In

Arbitration Matter No.2 of 2001

The National Small Industries
Corproation ltd. .. Claimants

V/s

M/s Kamal Traders and Ors. ..Respondents

Shri R.J.Singh for Claimant
Ms Naseem Patrawalla i/b Pravin Mehta and Mithi and Co.
for Ishwar Bhawan Society
Mr.A.J.John for Auction Purchaser
Mr.A.M.Kazi,Deputy Sheriff is present.

CORAM:S.R.SATHE,J.

DATED:15th June 2007

P.C.:-

1. Heard the learned Advocate for the parties.

2. Perused the Sheriff's Report. It is in respect of confirmation of sale.

3. Dispute has arisen at this stage between claimants and purchaser because in the Sale proclamation it was specifically mentioned that Flat No. 3B admeasuring 901 Sq.ft. will be sold. However, subsequently it has transpired that Flat No.3B is in fact not admeasuring 901 Sq.Ft. but the said flat is only 620 sq.ft. The learned Advocate for claimants still wants to insist that the flat No.3B is admeasuring 901 sq.ft. and purchaser be asked to purchase it for the amount of Rs.1,39,00,000/- i.e. the bid given by him. We cannot ignore the fact that at once stage even the claimants had moved the Chamber Summons wherein they had categorically stated that Society has informed that flat NO.3B is 620 sq.ft. and No.3A is 1108 sq.ft. and Commissioner for taking accounts had been informed accordingly and through over sight amendment was not carried out or correction was not carried in the execution application, warrant of attachment and sale proclamation, so it be allowed to amend it as per Schedule to Chamber Order. the said application was allowed by Additional Prothonotary on 22-11-2006. It appears that execution application was amended on 2-12-2006 but even then no specific area of Flat No.3B was mentioned.

4. It is clear that even in the sale proclamation it was mentioned that Flat no.3B owned by Respondent no.2 admeasuring 901 sq.ft. is to be sold. Admittedly, Respondent no.2 is the owner of Flat No.3B and Respondent

no.4 is the owner of Flat No.3A. Admittedly, flat No.3A is owned by Respondent no.4 and it was not at all mentioned in the sale proclamation. When such is the position, how any portion owned by Respondent no.4 can be allowed to be sold in present auction. Even if we assume that some portion out of 901 Sq.ft. is forming part and parcel of Flat No.3A and is owned by Respondent no.4, still in my opinion, it was necessary to issue sale proclamation by mentioning all these facts clearly. But admittedly that has not happened.

5. It is submitted on behalf of the proposed Purchaser that if only 620 sq.ft. out of Flat NO.3B is sold to him he is ready to purchase it, but then in that event, he be allowed to make the payment of purchase price proportionately i.e. in respect of only 620 sq.ft. But it seems that claimants are not even ready for that. It is true that decree is against Respondent no.4 also. But Respondent no.4 is the owner of Flat No.3A and Flat owned by him is admeasuring 1108 sq.ft. as per Society's record. So, if his property is to be sold then it was necessary to have proclamation about the said property but that has not happened. From the submission made before me it appears that some portion out of flat no.3A might have been included in Flat No.3B by the mutual agreement between the owners. But as per Society's record Flat No.3B is 620 Sq.ft. and Flat No.3A is 1108 sq.ft. So, this may also create further complications regarding right, title and interest of respective parties

and the Society may raise objection to the Purchaser in claiming that he is the owner of the flat No.3B admeasuring 901 sq.ft.

6. Considering all these aspects I think that the sale cannot be confirmed which has proceeded on the wrong description of the property. If the claimant is interested to put the property that is Flat No.3A and Flat No.3B held by Respondent no.4 and 2 respectively for auction, then also it is necessary to issue new proclamation because there would be change in the area of the property to be sold.

7. In view of the the above, the auction held by the Sheriff is cancelled.

8. At this stage the learned Advocate for the Purchaser submitted that the Sheriff be directed to return the amount deposited by him. Hence the Sheriff is directed to return the amount deposited by the purchaser to him within 8 days from today.

9. If the claimants want to put the property owned by the Respondent nos.2 to 4 for auction then the claimants may apply accordingly and then in that event new proclamation for sale has to be issued in the daily local news paper.

10. Parties to act on the authenticated copy of this

order.

(S.R.SATHE,J.)